

U.S. Senate
Republican Policy
Committee

Don Nickles, Chairman
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Legislative Notice

Editor, Judy Gorman Prinkey

No. 5 (R)

February 28, 1995
(Revised March 6, 1995)
(key changes highlighted)

S. 244 — Paperwork Reduction Act of 1995

Calendar No. 21

Reported from the Committee on Governmental Affairs on February 14, 1995, with an amendment, by a unanimous vote. S. Rept. 104-8. Senator Glenn filed additional views.

NOTEWORTHY

- At press time, no unanimous consent agreement governs the consideration of S. 244, but it is anticipated that a bill managers' amendment will be offered; any votes, including final passage, are expected to occur on Tuesday, March 7.
- S. 244, the Paperwork Reduction Act of 1995, is "substantially identical" to S. 560, of the last Congress which passed the Senate by voice vote on October 6, 1994. The House did not take up that act before adjournment of the 103d Congress.
- S. 244 has bipartisan support. Of the 22 original sponsors, one-half are from each party. Three Republicans and three Democrats who sit on the Committee are sponsors. The Chairman (Mr. Roth) and the Ranking Minority Member (Mr. Glenn) are cosponsors.
- The bill strengthens the Paperwork Reduction Act of 1980, as amended, by maintaining the goal of reducing paperwork by five percent annually, by improving informational technology management, and by advancing information dissemination. S. 244 also reauthorizes for five years the Office of Information and Regulatory Affairs (OIRA), in the Office of Management and Budget.
- By a vote of 418-0, the House of Representatives passed its own paperwork reduction act (H.R. 830) on February 22, 1995 (Senate Calendar No. 23). That bill calls for an annual 10-percent cut in the federal paperwork burden, and it would permanently reauthorize OIRA. The Clinton Administration formally supported H.R. 830, but no formal statement of support has been issued yet on the Senate bill.

HIGHLIGHTS

The Committee gives the following nine purposes for the Act:

1. Reaffirm the fundamental purpose of the Paperwork Reduction Act of 1980, namely to minimize the Federal paperwork burdens imposed on the public by Government;
2. Clarify that the act applies to all Government-sponsored collections of information (including disclosure requirements), eliminating any confusion (caused by the U.S. Supreme Court's 1990 decision in *Dole v. United Steel Workers of America*) over the coverage of third-party paperwork burdens;
3. Emphasize the fundamental responsibilities of each Federal agency to minimize paperwork burdens and foster paperwork reduction by requiring a thorough review of each proposed collection of information for need and practical utility;
4. Seek to reduce the paperwork burdens imposed on the public through better implementation of the annual Government-wide paperwork reduction goal of 5 percent;
5. Reauthorize appropriations for OMB's Office of Information and Regulatory Affairs (OIRA) for five years (through FY 2000), at \$8 million each year;
6. Enhance opportunities for public participation in government decisions regarding paperwork burdens;
7. Establish policies to promote the dissemination of public information in a timely and fair manner;
8. Strengthen agency accountability for managing information resources efficiently and effectively; and
9. Improve OIRA and other central management agency oversight of agency information resources management policies and practices. [S. Rept. 104-8 at 1-2 (edited).]

BACKGROUND

The Paperwork Burden

According to the Small Business Administration, the federal paperwork burden costs U.S. businesses 1 billion hours and \$100 billion each year.

The General Accounting Office issued a report in 1994 which the Committee report summarized as follows:

"Federal agencies spent at least \$25 billion on information technology in 1993, and more than \$200 billion over the last 12 years. Despite this huge expenditure, it is unclear what the public has received for its money. At the same time, critical information is frequently inaccurate, inaccessible, or nonexistent. Efforts across the government to improve mission performance and reduce costs are still too often limited by the lack of information or the poor use of information technology.

"* * * *

"... More often than not, information management decisions are made in response to crises, without first examining how to simplify and redesign embedded, complex mission processes. In short, the emphasis lies on conforming to existing processes -- which are rarely reevaluated -- rather than focusing on results." (S. Rept. at 94, 95.)

The *Dole v. Steelworkers* Case

S. 244 is in part a response to the Supreme Court's 1990 decision in *Dole v. United Steelworkers of America*, 494 U.S. 26. In *Dole*, the Department of Labor had proposed standards under the Occupational Safety and Health Act that required manufacturers to label hazardous chemical containers and to conduct training on the dangers of the chemicals. The standards were submitted to OMB to review under the Paperwork Reduction Act of 1980 which required certain proposed rules and standards to be submitted to OMB for approval. OMB disapproved some of the proposed standards as being unnecessary to protect employees, and the Department of Labor withdrew those standards. The Court of Appeals ordered the Department to reinstate the standards because, among other things, under the Paperwork Reduction Act the OMB had no authority to disapprove the standards. The Supreme Court affirmed, agreeing that the OMB did not have authority to review and reject agency regulations that required third parties to disclose information.

The Court said:

"[W]e find that the [statutory] terms 'collection of information' and 'information collection request,' when considered in light of the language and structure of the Act as a whole, refer solely to the collection of information by, or for the use of, a federal agency; they cannot reasonably be interpreted to cover rules mandating disclosure of information to a third party. . . ." 494 U.S. at 41. "Because we find that the statute, as a whole, clearly expresses Congress' intention, we decline to defer to OMB's interpretation. . . . We affirm the judgment of the Third Circuit insofar as it held that the Paperwork Reduction Act does not give OMB the authority to review agency rules mandating disclosure by regulated entities to third parties." 494 U.S. at 42-43 (citations and footnote omitted).

The Original Paperwork Reduction Act

The Paperwork Reduction Act of 1980 was an attempt to "focus the attention of the entire Federal management apparatus on the twin tasks of reducing public information collection burdens and maximizing the utility of government information to more efficiently and effectively perform government functions."

The 1980 Act covered information collections contained in and associated with regulations, recognizing that government regulations were causing the greatest growth in information requirements. The Act created the Office of Information and Regulatory Affairs (OIRA) within OMB, designed to serve as a single management framework to government federal information activities and consolidate oversight. Beginning with President Reagan's Executive Order 12291 in early 1981, OIRA was charged with broad regulatory review responsibilities, including providing a cost/benefit review of proposed agency regulations. That executive order was replaced in September of 1993 by President Clinton's Executive Order 12866, which reduced OIRA's review of agency regulatory proposals.

The Paperwork Reduction Act was last substantially amended in 1986.

COST

The Congressional Budget Office reports that, "S. 244 would not affect direct spending or receipts." Therefore, pay-as-you-go procedures would not apply to the bill.

Authorization levels for fiscal years 1996 through 2000 are \$8 million per year for a total of \$40 million. Estimated outlays are \$7 million in the first year and \$8 million thereafter for a total of \$39 million.

No costs are expected to be imposed on States and local governments.

REGULATORY IMPACT

"S. 244, as amended, strengthens Federal agency management policies and practices to improve the efficient and effective management of information resources in support of agency mission, including guiding the reduction of information collection burdens on the public and improvements in information security and privacy protection. Accordingly, the legislation would not result in any additional regulation, increased economic impact, adverse impact on personal privacy, or additional paperwork on any individuals or businesses. Quite the contrary, the legislation should result in fewer regulations, less paperwork, better privacy and security protections, more useful government information, and less costs to both the public and the government." (S. Rept. at 57.)

ADMINISTRATION POSITION

The Clinton Administration supports the enactment of S. 244. In a Statement of Administration Policy issued February 28, 1995, the OMB stated that S. 244 could affect receipts, and so is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary PAYGO estimate is zero. The Administration also supports the House bill, H. R. 830.

OTHER VIEWS

In Senator Glenn's Additional Views, he said:

"I support the bill wholeheartedly and will urge my colleagues to vote for it. . . . Support for the original Act and for the current legislation should not, however, lead anyone to overlook the problems that have frustrated full implementation of the law. I set forth my individual views in th[is] Committee report solely because I believe the report downplays those problems.

"We undermine our own legislative and oversight record if in our fear of undermining our law we shy away from honestly assessing the tradeoffs occasioned by the creation of a strong centralized review process in OMB. I support the OMB management process and I believe it should be strong. But, I will not shrink from fulfilling my responsibility to be vigilant in oversight, asking hard questions and searching for better ways to fulfill statutory purposes.

"Last year's report was, again, I believe, more accurate about the Act's history, blemishes and all. I regret that this year's report obscures that record." (S. Rept. at 59-60 (several paragraphs excerpted and compressed).)

POSSIBLE AMENDMENTS

A managers' amendment is expected that would provide a number of technical corrections and would incorporate a provision from Senator Coverdell to minimize the burden on businesses that have to provide quarterly financial reports to the Census Bureau for that agency's efforts in calculating economic indicators.

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[This is a revised Legislative Notice. Key changes to the original notice, issued on February 28, 1995, are highlighted and are found on pages 1, 5, and 6.]